

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

**FILED**

**2021 JUL -8 AM 9:36**

CLERK  
US BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re: ) Chapter 11  
W. R. Grace & Co, et al. ) Case No. 01-01139 (AMC)  
Reorganized Debtors. ) (Jointly Administered)  
)  
)  
\_\_\_\_\_ ) Docket Nos. 33217 and 33216

**APPELLANT GARY SMOLKER'S DESIGNATION OF RECORD ON  
APPEAL AND STATEMENT OF ISSUES ON APPEAL**

**Designation of Record**

Filing Date	#	Docket Text
08/03/2020	<u>33154</u> (760 pgs; 26 docs)	Motion For Summary Judgment Filed by W.R. Grace & Co., et al.. Objections due by 8/17/2020. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A - Proposed Order # <u>3</u> Exhibit B - Memorandum of Law # <u>4</u> Exhibit C - Lewis Declaration # <u>5</u> Exhibit C-1 # <u>6</u> Exhibit C-2 # <u>7</u> Exhibit C-3 # <u>8</u> Exhibit C-4 # <u>9</u> Exhibit C-5 # <u>10</u> Exhibit C-6 # <u>11</u> Exhibit C-7 # <u>12</u> Exhibit C-8 # <u>13</u> Exhibit C-9 # <u>14</u> Exhibit C-10 # <u>15</u> Exhibit C-11 # <u>16</u> Exhibit C-12 # <u>17</u> Exhibit C-13 # <u>18</u> Exhibit C-14 # <u>19</u> Exhibit C-15 # <u>20</u> Exhibit C-16 # <u>21</u> Exhibit C-17 # <u>22</u> Exhibit C-18 # <u>23</u> Exhibit C-19 # <u>24</u> Exhibit C-20 # <u>25</u> Certificate of Service) (O'Neill, James) (Entered: 08/03/2020)
08/18/2020	<u>33157</u> (52 pgs)	Objection And Response to W.R. Grace & Co.'s Motion for Summary Judgement (related document(s) <u>33154</u> ) Filed by Gary S. Smolker (AJL) (Entered: 08/18/2020)
	<u>33158</u> (7 pgs; 2 docs)	Notice of Hearing /Telephonic Status Conference Regarding Motion for Summary Judgment Pursuant to Fed. R. Bankr. P. 7056 for Disallowance of Claim No. 392, Filed By Gary S. Smolker, and Related Claims, Nos. 382 and 4070, Filed By Home Savings Termite Control, Inc., and Wayne Morris, Respectively (related

09/01/2020		document(s) <u>33154</u> ) Filed by W.R. Grace & Co., et al.. (Attachments: # <u>1</u> Certificate of Service and Service List) (O'Neill, James) (Entered: 09/01/2020)
09/28/2020	<u>33161</u> (10 pgs; 3 docs)	Certification of Counsel Regarding Order Approving Briefing Schedule and Hearing Date for Motion for Summary Judgment Pursuant to Fed. R. Bankr. P. 7056 for Disallowance of Claim No. 392, Filed By Gary S. Smolker, and Related Claims, Nos. 382 and 4070. Filed By Home Savings Termite Control, Inc., and Wayne Morris, Respectively (related document(s) <u>33154</u> ) Filed by W.R. Grace & Co., et al.. (Attachments: # <u>1</u> Exhibit A - Proposed Order # <u>2</u> Certificate of Service and Service List) (O'Neill, James) (Entered: 09/28/2020)
12/16/2020	<u>33173</u> (7 pgs; 3 docs)	Certification of Counsel Regarding Amended Order Approving Briefing Schedule and Hearing Date for Motion for Summary Judgment Pursuant to Fed.R.Bankr. P. 7056, for Disallowance of Claim No. 392, Filed by Gary S. Smolker, and Related Claim Nos. 382 and 4070, Filed by Home Savings Termite Control, Inc. and Wayne Morris, Respectively (related document(s) <u>33154</u> , <u>33163</u> ) Filed by W.R. Grace & Co., et al.. (Attachments: # <u>1</u> Exhibit A - Proposed Order # <u>2</u> Certificate of Service and Service List) (O'Neill, James) (Entered: 12/16/2020)
01/04/2021	<u>33177</u> (767 pgs)	Declaration In Opposition To Reorganized Debtor W.R.Grace & Co.'s ("Grace's") Motion for Summary Judgement. Filed by Gary Smolker . (SS) (Entered: 01/04/2021)
01/04/2021	<u>33178</u> (19 pgs)	Exhibit(s) RE: Declaration In Opposition To Reorganized Debtor W.R. Grace & Co.'s ("Grace's") Motion for Summary Judgement. (RE:#33177) Filed by Gary S. Smolker . (SS) (Entered: 01/04/2021)
01/15/2021	<u>33181</u> (37 pgs)	Motion for Leave To File Additional Pleadings And Exhibits After The Time Has Expired (related document(s) <u>33154</u> , <u>33163</u> ) Filed by Gary S. Smolker. The case judge is Ashely M. Chan. Objections due by 2/5/2021. (AJL) (Entered: 01/15/2021)



01/20/2021	<u>33183</u> (282 pgs; 7 docs)	Reply in Support of Grace's Motion for Summary Judgment Pursuant to Fed. R. Bankr. P. 7056 for Disallowance of Claim No. 392, Filed By Gary S. Smolker, and Related Claims, Nos. 382 and 4070, Filed By Home Savings Termite Control, Inc, and Wayne Morris, Respectively (related document(s) <u>33154</u> , <u>33157</u> , <u>33177</u> ) Filed by W.R. Grace & Co., et al. (Attachments: # <u>1</u> Exhibit A - Supplemental Declaration # <u>2</u> Exhibit A-1 Superior Court Reply # <u>3</u> Exhibit A-2 Higgins Declaration # <u>4</u> Exhibit A-3 Confirmation of Filing # <u>5</u> Exhibit B Transcript # <u>6</u> Certificate of Service and Service List) (O'Neill, James) (Entered: 01/20/2021)
	<u>33185</u> (174 pgs; 9 docs)	Objection // Reorganized Debtor's Objection to Motion and Supporting Declaration of Gary S. Smolker ("Smolker") for Leave to
01/25/2021		File the Following Additional Pleadings and Exhibits in Opposition to Grace's Pending Motion for Summary Judgment (related document(s) <u>33181</u> , <u>33182</u> ) Filed by W.R. Grace & Co., et al. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Certificate of Service and Service List) (O'Neill, James) (Entered: 01/25/2021)
01/25/2021	<u>33186</u> (8 pgs)	Amended Certificate of Service Regarding Reply in Support of Grace's Motion for Summary Judgment Pursuant to Fed. R. Bankr. P. 7056 for Disallowance of Claim No. 392, Filed By Gary S. Smolker, and Related Claims, Nos. 382 and 4070, Filed By Home Savings Termite Control, Inc, and Wayne Morris, Respectively (related document(s) <u>33183</u> ) Filed by W.R. Grace & Co., et al.. (O'Neill, James) (Entered: 01/25/2021)
01/28/2021	<u>33190</u> (32 pgs)	Transcript regarding Hearing Held 9/17/2020 RE: Status Conference. Remote electronic access to the transcript is restricted until 4/28/2021. The transcript may be viewed at the Bankruptcy Court Clerk's Office. For information about how to obtain a transcript, call the Clerk's Office or Contact the Court Reporter/Transcriber, Veritext, at Telephone number (888)706-4576. Notice of Intent to Request Redaction Deadline Due By 2/4/2021. Redaction Request Due By 2/18/2021. Redacted Transcript Submission Due By 3/1/2021. Transcript access will be restricted through 4/28/2021. (BJM) (Entered: 01/28/2021)
	<u>33191</u> (30 pgs)	Transcript regarding Hearing Held 12/15/2020 RE: Hearing re: Request for Extension. Remote electronic access to the transcript is restricted until 4/28/2021. The transcript may be viewed at the Bankruptcy Court Clerk's Office. For information about how to obtain a transcript, call the Clerk's Office or Contact the Court Reporter/Transcriber, Veritext, at Telephone number (888)706-4576. Notice of Intent to Request Redaction Deadline Due By 2/4/2021. Redaction Request Due By 2/18/2021. Redacted Transcript Submission Due By 3/1/2021. Transcript access will be restricted

01/28/2021		through 4/28/2021. (BJM) (Entered: 01/28/2021)
01/28/2021	<u>33192</u> (32 pgs)	Transcript regarding Hearing Held 1/8/2021 RE: Hearing re: Request for Extension. Remote electronic access to the transcript is restricted until 4/28/2021. The transcript may be viewed at the Bankruptcy Court Clerk's Office. For information about how to obtain a transcript, call the Clerk's Office or Contact the Court Reporter/Transcriber, Veritext, at Telephone number (888)706-4576. Notice of Intent to Request Redaction Deadline Due By 2/4/2021. Redaction Request Due By 2/18/2021. Redacted Transcript Submission Due By 3/1/2021. Transcript access will be restricted through 4/28/2021. (BJM) (Entered: 01/28/2021)
02/01/2021	33194	Hearing Held regarding Motion for Leave To File Additional Pleadings And Exhibits in Opposition to Graces Pending Motion for Summary Judgment Filed by Gary S. Smolker - Denied. (related document(s) <u>33181</u> , <u>33189</u> ) (AJL) (Entered: 02/01/2021)
02/01/2021	33195	Hearing Held regarding the Motion For Summary Judgment for Disallowance of Claim No 392, Filed by Gary S Smolker and Related Claims No. 382 and 4070 Filed by Home Savings Terminate Control, Inc and Wayne Morris, Respectively Filed by W.R. Grace & Co., et al. - Granted; Informal letter brief as to Res Judicate to be submitted in two weeks; Order to be entered. (related document(s) <u>33154</u> ) (AJL) (Entered: 02/01/2021)
02/08/2021	<u>33196</u> (4 pgs)	Notice of Service Filed by Gary S. Smolker. (SS) (Entered: 02/08/2021)
02/16/2021	<u>33197</u> (6 pgs; 2 docs)	Letter // <i>Supplemental Letter Brief dated February 16, 2021 to the Honorable Ashely M. Chan from The Law Office of Roger Higgins, LLC</i> (related document(s) 33195 ) Filed by W.R. Grace & Co., et al.. (Attachments: # <u>1</u> Certificate of Service and Service List) (O'Neill, James) (Entered: 02/16/2021)
02/16/2021	<u>33198</u> (2 pgs)	Order Directing Debtors to Serve Home Saving Termite Control, Inc. and Wayne Morris it's Motion for Summary Judgment. (related document(s) <u>33154</u> ) Order Signed on 2/16/2021. (BJM) (Entered: 02/16/2021)
	<u>33199</u>	Notice of Hearing /Re-Notice of Motion for Summary Judgment





02/23/2021		Additional attachment(s) added on 2/25/2021 (BJM). Additional attachment(s) added on 2/25/2021 (BJM). Additional attachment(s) added on 2/25/2021 (BJM). (Entered: 02/23/2021)
02/24/2021	<u>33204</u> (2 pgs)	Certificate of Service. (related document(s) <u>33201</u> ) Filed by Gary Smolker . (BJM) (Entered: 02/24/2021)
02/24/2021	<u>33205</u> (2 pgs)	Certificate of Service. (related document(s) <u>33203</u> ) Filed by Gary Smolker . (BJM) (Entered: 02/24/2021)
02/24/2021	<u>33206</u> (2 pgs)	Certificate of Service. (related document(s) <u>33201</u> , <u>33202</u> , <u>33203</u> ) Filed by Gary Smolker . (BJM) (Entered: 02/24/2021)
02/24/2021	<u>33207</u> (1 pg)	Certificate of Service. (related document(s) <u>33201</u> , <u>33202</u> , <u>33203</u> ) Filed by Gary Smolker . (BJM) (Entered: 02/24/2021)
02/25/2021	<u>33208</u> (1 pg)	Order Restricting Certain Documents Regarding Exhibits 18 Through 41. Order Signed on 2/24/2021. (BJM) (Entered: 02/25/2021)
03/08/2021	<u>33212</u> (3 pgs)	Motion to Approve <i>Request for Hearing Date For Motion To Set Trial Date And For Court Case Management Order Specifying Who Should Do What By What Date Before Trial</i> Filed by Gary S. Smolker. The case judge is Ashely M. Chan. (AJL) (Entered: 03/08/2021)
03/11/2021	<u>33213</u> (46 pgs)	Transcript regarding Hearing Held 2/1/2021 RE: Motion for Summary Judgment. Remote electronic access to the transcript is restricted until 6/9/2021. The transcript may be viewed at the Bankruptcy Court Clerk's Office. For information about how to obtain a transcript, call the Clerk's Office or Contact the Court Reporter/Transcriber, Veritext, at Telephone number (888)406-2250. Notice of Intent to Request Redaction Deadline Due By 3/18/2021. Redaction Request Due By 4/1/2021. Redacted Transcript Submission Due By 4/12/2021. Transcript access will be restricted through 6/9/2021. (BJM) (Entered: 03/11/2021)
03/15/2021	<u>33214</u> (3 pgs)	Motion to Strike <i>Supplemental Letter Brief Dated February 16, 2021</i> Filed by Gary S. Smolker. The case judge is Ashely M. Chan. (AJL) (Entered: 03/15/2021)
03/15/2021	<u>33215</u> (7 pgs)	Motion to Compel Court Order Seeking Compensation and Sanctions and Request for Hearing Date Filed by Gary S. Smolker. The case judge is Ashely M. Chan. (AJL) (Entered: 03/15/2021)



### **Statement of Issues**

1. Must Judge Ashely M. Chan's ("CHAN'S") order filed on March 16, 2021 ("ORDER") granting Summary Judgment to W.R. Grace & Co. ("GRACE") for disallowance of Claim No. 392 filed by Gary Smolker (SMOLKER) in its entirety be reversed because CHAN'S ORDER gives relief to GRACE beyond the scope of relief GRACE asked for in GRACE'S Motion for Summary Judgment and Disallowance of Claim No. 392 filed by SMOLKER?
2. Must CHAN'S ORDER be reversed because GRACE did not Support its Motion for Summary Judgment for Disallowance of Claim Nol. 392 filed by SMOLKER with facts or law related to SMOLKER'S claim for real property damages, personal property damages, personal injury damages, and damages caused by GRACE'S illegal and ultra-hazardous activities and fraud?
3. Must CHAN'S ORDER be reversed because GRACE is guilty of unclean hands: (a) illegal conduct, (b) perpetrating a fraud on the court, (c) perpetrating a fraud on SMOLKER?
4. Must CHAN'S ORDER be reversed because GRACE did not provide admissible evidence in support of GRACE'S legal arguments?
5. Must CHAN'S ORDER be reversed because GRACE did not provide legal authority in support of GRACE's legal arguments?
6. Must CHAN'S ORDER be reversed because CHAN'S ORDER is based on a misstatement of critical facts?
7. Must CHAN'S ORDER be reversed because untrue facts (falsehoods) upon which CHAN based her ORDER were provided by GRACE?
8. Must CHAN'S ORDER be reversed because CHAN did not grant SMOLKER'S Motion to Strike GRACE'S Supplemental Letter Brief?
10. Must CHAN'S ORDER be reversed because SMOLKER was denied due process by not being given a reasonable amount of time by to respond to

GRACE'S Motion for Summary Judgment for Disallowance of Claim 392 filed by SMOLKER?

11. Does the United States District Court have jurisdiction to review a final decision of a state court in a judicial proceeding?
12. Did CHAN have legal authority to make a final order on GRACE'S motion?
13. Did CHAN have legal authority to make a final order on SMOLKER'S motions?
14. Must CHAN'S ORDER be reversed because CHAN conducted important hearings "off record" – without notifying SMOLKER that written papers SMOLKER sent CHAN would not be considered "on the record" by having SMOLKER send CHAN his legal pleadings directly instead of having them filed with the Bankruptcy Court in Delaware and having them docketed?
15. Must CHAN'S ORDER be reversed because court employees working directly for Judge Chan involved in the preparation of transcripts of hearing conducted by CHAN misdirected SMOLKER on how to obtain a transcript of the hearings held by CHAN?
16. Must CHAN'S ORDER be reversed because CHAN abused legal process?
17. Must CHAN'S ORDER be reversed because GRACE'S attorneys abused legal process?
18. Must CHAN'S ORDER be reversed because there is no legal basis for CHAN'S ORDER?

Dated: July 6, 2021

  
TT

GARY SMOLKER, In Pro Per

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16055 Ventura Blvd., Suite 525, Encino, CA. 91436



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

Case No. 01-01139 (AMC) (Jointly Administered)

I am a resident of the State of California, over the age of eighteen years, and not a party to this action. My business address is 16055 Ventura Blvd., Suite 525, Encino, CA 91436.

On July 7, 2021, I caused to be served the following titled and attached document on the attorneys for W.R. Grace & Co. by causing a true and correct copy to be enclosed securely in separate prepaid envelopes and deposited each envelope with the United States Postal Service in Encino, California to be delivered via first class mail to those parties listed below.

**APPELLANT GARY SMOLKER'S DESIGNATION OF RECORD ON  
APPAL AND STATEMENT OF ISSUES ON APPEAL**

X Via United States mail on:

Roger J. Higgins, Esq.  
Law Offices of Roger Higgins, LLC  
516 North Ogden Avenue, Suite 136  
Chicago, Illinois 60642

James E. O'Neill, Esq.  
Pachulski Stang Ziehl and Jones  
919 North Market Street – 17<sup>th</sup> floor  
Wilmington, Delaware 19899

X BY FEDERAL EXPRESS: ORIGINAL SENT FOR FILING WITH THE  
UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF  
DELAWARE VIA FEDERAL EXPRESS OVERNIGHT MAIL

United State Bankruptcy Court for the District of Delaware  
Office of the Clerk  
824 Market Street  
Wilmington, Delaware 19801

Executed on July 6, 2021, 2021at Encino, California.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

A handwritten signature in blue ink, appearing to read "Sabrina Jones", with a stylized, cursive script.

Sabrina Jones